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LEIGHTON TECHNOLOGIES LLC

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

LEIGHTON TECHNOLOGIES LLC,	)	
	)	04 Civ. 02496 (CM) (LMS)
Plaintiff and Counterclaim Defendant,	)	
	)	<b>NOTICE OF LODGING OF PAGES</b>
	)	<b>FROM DEPOSITION OF HERBERT</b>
	)	<b>GRUEN RE: PLAINTIFF LEIGHTON</b>
	)	<b>TECHNOLOGIES' OPPOSITION TO</b>
	)	<b>MOTION FOR SUMMARY</b>
	)	<b>JUDGEMENT</b>
	)	
OBERTHUR CARD SYSTEMS, S.A.,	)	Hearing Date: April 4, 2006
	)	
Defendant and Counterclaim Plaintiff.	)	
_____	)	

Plaintiff Leighton Technologies hereby lodges the attached pages, Exhibit 1, from the Deposition Of Herbert Gruen, which was taken on March 13, 2006. The deposition was taken subsequent to the filing of papers for the Motion for Summary Judgment, scheduled for hearing on April 4, 2006. The pages may be referenced in the course of oral argument.

Dated: March 29, 2006

SUTHERLAND ASBILL & BRENNAN, LLP

/s/ Robert A. Gutkin

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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that a true and correct copy of **PLAINTIFF LEIGHTON TECHNOLOGIES LLC'S NOTICE OF LODGING OF PAGES FROM DEPOSITION OF HERBERT GRUEN RE: PLAINTIFF LIEHGOTN TECHNOLOGIES' OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** was caused to be served on counsel for **OBERTHUR CARD SYSTEMS, S.A. and OBERTHUR CARD SYSTEMS OF AMERICA CORPORATION**, by sending a copy of this document by overnight mail on March 29, 2006 to the following:

James David Jacobs (JJ-7351)  
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Dated: March 29, 2006

/s/ Robert A. Gutkin  
Robert A. Gutkin (Pro hac vice)

# **Exhibit 1**



1 GRUEN

2 formal education after what we in the United States  
3 would term high school.

4 A After high school, I -- I have a degree in  
5 plastics engineering from Germany. It has been done  
6 in '79, and I worked afterwards in the plastics  
7 industry, chemistry, for a couple of years and then  
8 later joined the card industry.

9 Q Okay. Could you -- other than your --  
10 from what university or school did you get your  
11 degree in plastic engineering?

12 A It's from the city of W<sup>o</sup>rrzburg.

13 Q Did you have any other formal training  
14 after attending school in the city of W<sup>o</sup>rrzburg?

15 A No.

16 Q Starting with your graduation from the  
17 city of W<sup>o</sup>rrzburg, could you just give us an overview  
18 of your employment history.

19 A I joined -- after I left high school, I  
20 joined the company VKW Staufen.

21 MR. GUTKIN: Could you spell it?

22 THE WITNESS: It's printed on here.  
23 This company.

24 A I worked there for ten years in different  
25 positions. This was a plastics manufacturer for

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2 security and other applications. And after that, I  
3 joined Giesecke & Devrient here in Munich, and I've  
4 worked there since.

5 Q What is your general responsibilities at  
6 your present employer?

7 A I'm a director of our sales support  
8 division.

9 Q And what do you sell?

10 A Security products.

11 Q Could you give us, approximately, the  
12 years that you were at Staufen?

13 A Years I were at Staufen?

14 Q Yes. What years approximately?

15 A From when to when?

16 Q From when to when.

17 A I joined '79 and I left '89.

18 Q What were your responsibilities at  
19 Staufen?

20 A I had a number of responsibilities. I  
21 started in technical customer support for a number  
22 of years. Then I was in charge of -- in charge of  
23 product management and, later on, technical  
24 marketing.

25 Q During what period were you in technical

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2 customer sales?

3 A First three years. First three years.

4 Q First three years.

5 And what did you do as a technical  
6 customer sales?

7 A Made presentations at customers, explained  
8 product range, solved problems, solved claims, this  
9 kind of environment.

10 Q What -- what kind of sales were you  
11 making?

12 A Sales? What products?

13 Q What product, yes.

14 A Films.

15 Q Films. And to what kind of customers were  
16 you selling those films?

17 A Security industry, card manufacturers, and  
18 packaging.

19 Q For how long were you in product  
20 management?

21 A For another three to four years.

22 Q Were your responsibilities any different  
23 as a product management?

24 A It was -- it was more or less key account  
25 management on a -- on a global basis.

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2 question.

3 A Can you say it in other words?

4 Q Sure.

5 You indicated what a carrier was, and you  
6 said it can have two functions, I believe. It can  
7 carry the chip and it can protect the chip --

8 A Yeah.

9 Q -- correct?

10 A Yeah.

11 Q Now, are you aware of manufacturers, prior  
12 to '94, who were making cards using carriers on  
13 their chips?

14 A Not on the chip. The chip is on a  
15 carrier.

16 Q Okay. So with the qualification that the  
17 carrier is not on the chip, but the chip is on the  
18 carrier, were you aware of manufacturers prior to  
19 1994 that were making cards that way?

20 A Before 1994 there was no --

21 MR. JACOBS: Objection, form. You  
22 can answer.

23 A -- there was no fixed technology. There  
24 was a lot of experimental stages. The manufacturers  
25 did not know where they end up, so everything was



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2 being tested and experimented.

3 Q Now, why wasn't there fixed technology at  
4 that point? Was this a new kind of product?

5 A It was brand -- brand-new.

6 Q When you say it was "brand-new," what do  
7 you mean?

8 A The first smart card I was confronted with  
9 was in the time around '81 to '83 and at that time.  
10 And before, they did not have any -- any chips  
11 inside.

12 Q Now, before '94, would you say it was  
13 still a relatively new technology?

14 A It took quite a long development period  
15 until it got accepted by -- by the markets and the  
16 customers found their own applications.

17 Q Now, why did it take a long development  
18 period?

19 A Because it's a huge investment into the  
20 entire system. It's not only the card. It's also  
21 the environmental structure which need to be  
22 implemented, like the reader terminals and all this  
23 stuff. So it goes very slowly, specifically at that  
24 time, because everybody was very scared to make  
25 wrong investments.

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2 '87, '88, '89, in this -- in this time frame.

3 Q And in that time frame, do you know how  
4 they made those cards that had the circuitry in  
5 them?

6 A They tried to laminate between layers, and  
7 they tried to embed later on by milling pockets  
8 into the card and embed the chips inside.

9 Q Well, let's focus on the laminating by  
10 layers. Do you know if they used a carrier, as  
11 we've been talking about it earlier, when they tried  
12 to laminate these electronics into layers?

13 A This I don't know. This is also the  
14 question how they -- how they called it at that  
15 time, what they meant. At least they did not handle  
16 the tiny little chip alone; they had to bring it in  
17 a transportable form. And this I would call a  
18 carrier.

19 Q Do you know how long that process of using  
20 a carrier continued for?

21 A Again, here I would estimate until mass  
22 production and production costs got very relevant.  
23 So it was -- with this carrier, the type of  
24 technology was expensive and it was slow. And when  
25 the volumes increased, then they had to find other

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2 ways.

3 Q Again, is it fair to say that prior to  
4 '94, the technology for putting electronics in these  
5 cards was changing?

6 MR. JACOBS: Objection.

7 A It was a process from the early '80s into  
8 the '90s, over that quite long time.

9 Q Has the technology from the early '90s to  
10 the present date changed, of putting the electronics  
11 in a card?

12 A It has been --

13 MR. JACOBS: Objection.

14 A -- stabilized over that time. The speed  
15 and the throughput is much better now, but the basic  
16 ideas how to handle it is more or less the same  
17 what -- what has been standardized in the early  
18 '90s.

19 Q When -- are you familiar with  
20 weight-compensated laminating machines?

21 A Weight-compensate -- never heard that  
22 word, no.

23 Q How about pressure-compensated laminating  
24 machines?

25 A Pressure compensated, never heard that in

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2 A It depends on the chemical ingredients,  
3 then it differs, yes.

4 Q If you were going to make a smart card,  
5 how would you go about selecting the materials to be  
6 used, what PVC to use? What would you want to know?

7 MR. JACOBS: Objection. Objection.

8 A How to -- how to select the product and  
9 the supplier?

10 There is only a handful of suppliers in  
11 the world for this specialized industry, and I know  
12 them all. So I just would contact a few of them and  
13 ask what they have, and the rest is own testing.

14 Q So it's -- when you say "testing," can you  
15 be more specific? What do you mean?

16 A The card manufacturers don't disclose  
17 their applications and the ingredients of the cards,  
18 so they just specify the films, you know, in a rough  
19 version, giving the supplier the possibility to  
20 deliver. And the rest has to be done in-house in --  
21 in the card industry, which is part of the security  
22 environment.

23 Q By the card manufacturers?

24 A At the card manufacturers, yes.

25 Q Would you consider that to be a trade

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2 secret?

3 A A trade secret for what?

4 Q For the card manufacturers.

5 MR. JACOBS: Objection, form.

6 A Yes. At least it's not an open discussion  
7 between the card manufacturers, what they use.

8 Q And has that been true since you've  
9 started in the industry?

10 A It is true as long as you have no signed  
11 confidentiality agreements. As soon as you have  
12 done that, then it's open. Why do you sign that?  
13 Just to -- you're going to disclose something to  
14 another company. And if this is necessary, then  
15 it's done.

16 MR. JACOBS: Could you read back the  
17 answer and question?

18 (Off-the-record discussion.)

19 (Record read.)

20 (Off-the-record discussion.)

21 MR. GUTKIN: I'll ask another  
22 question if it will --

23 MR. JACOBS: Yeah, I object to the  
24 whole -- I totally lost the stream of what the  
25 questions and answers were. That's why I asked her.

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2 MR. GUTKIN: Let me put you back in  
3 the --

4 MR. JACOBS: I object to the last  
5 question and answer.

6 MR. GUTKIN: I'll put you back in the  
7 stream --

8 MR. JACOBS: Okay.

9 MR. GUTKIN: -- or at least in the  
10 river. How's that?

11 Q (By Mr. Gutkin) Now, card manufacturers  
12 use specific lamination cycles to make smart cards,  
13 correct?

14 A Yeah.

15 Q And they've used specific -- wait a  
16 minute. I'm speaking slower, if you noticed.

17 They've used specific lamination cycles to  
18 make smart cards since you started in the industry,  
19 correct?

20 A Yeah.

21 Q Now, is it also true, since you've started  
22 in the industry, that those specific lamination  
23 cycles have been considered trade secrets?

24 A It is true and it's still up today.

25 Q And by trade secrets, would it also be

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2 true that manufacturers would not share those  
3 specific lamination cycles with other people?

4 A In case you sign some contract with them,  
5 then they share.

6 Q But in the absence of a contract, they  
7 would not share?

8 A Nobody shares.

9 Q And they don't publish those lamination  
10 cycles to --

11 A No.

12 Q -- the general world?

13 A No.

14 Q You went a little faster than I did that  
15 time.

16 A Yeah.

17 Q And that's still true today?

18 A That's still true.

19 Q And it was true when you started in the  
20 industry?

21 A That's correct. But I signed a lot of  
22 contracts, as I told you, because my work was to  
23 solve the problems of the customers, so I got  
24 information.

25 Q Now, I just want to focus for a moment on

1 GRUEN

2 Q Why?

3 A Because the environmental temperatures in  
4 summer can be higher than the card can -- can bear.

5 Q And what happens if the temperatures are  
6 higher?

7 A The card distorts.

8 Q Are you familiar with an organization  
9 known as the International Card Manufacturers  
10 Association?

11 A I'm the president of this.

12 Q So I guess you're very familiar with it.

13 A Yeah.

14 Q And is that also known as the ICMA?

15 A Yes.

16 Q What's the purpose of the ICMA?

17 A This is a global marketing platform to  
18 support the industry.

19 Q Does the ICMA put out white papers?

20 A Not that I'm aware of, no.

21 Q Does it put out material relating to  
22 topics of industry interest?

23 A It publishes a magazine. And if some  
24 specialist in the industry has a nice topic which  
25 sounds good for everyone, then it can be printed